
PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
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Gerrit Reinold Jacob Melles)	Examiner: Samantha Miller
)	
Serial No.: 10/808,718)	Art Unit: 3749
)	
Filed: March 25, 2004)	Conf. No.: 5646
)	
Title: OPERATION UNIT)	

Commissioner for Patents
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REASONS IN SUPPORT OF REQUEST FOR PRE-APPEAL BRIEF REVIEW

Claims 1, 3-14 and 19-32 are patentable over Howorth and van der Waaji. Claim 1 is directed to an *operation unit having an enclosed space* formed from at least two side walls, a roof element, a back wall and a wall. The air outlet opening *is within the enclosed space*. The air inlet means *is also within the enclosed space* and provided *for retracting air from within said enclosed space* to said air flow unit. In the present office action at page 7, the Examiner acknowledges that “Howorth does not teach a return duct thus does not teach retracting the air from the enclosure.” This is in fact correct because Howorth teaches to do *just the opposite*, namely to obtain air from *outside the operating unit* through duct d. Further, the air outlets B are clearly not within the enclosed space, as they reside above the operation unit and project air in all directions from the units B. These structural aspects are clearly shown in all of the figures where the air flow unit, air inlet and air outlet are all positioned *above and exterior to the four side walls* of the operating unit. See Figs. 1-3 of Howorth.

Further, Howorth does not teach an operation unit having an *enclosed space including a roof element*. In the present office action at page 8, the Examiner says that Howorth teaches the roof element, referring to a1 in Figure 3 and further stating that “applicant has pointed out Howorth teaches a ceiling of the operation enclosure.” However, applicant made no such representation. As clearly shown in the figures and detailed in the written description of Howorth, *the operation unit of Howorth has no roof or ceiling*. As shown in Figure 3, the front, rear and sidewalls of the operating theater “extend downwardly from the edges of an *opening in ceiling a’*.” (Emphasis added). See also col. 2 lines 28-31 and col. 1 line 64 teaching that “Air is supplied to the compartment over substantially the whole area of the *ceiling opening*.” (Emphasis added). As applicants stated in their Amendment and Response to Office action filed October 27, 2009 at page 9, “if there was a roof, as the Examiner implies from a1, it would be impossible for the air flow unit to direct air flow into the operation unit.” “A roof would defeat the purpose of Howorth.”

At page 4 of the present office action, the Examiner further notes that Howorth fails to teach the claimed feature of a foldable roof element (claim 4) and wheels attached to the operation unit (claim 13). Howorth further fails to disclose that outflow is directed away from the wall as required by claim 9. Howorth discloses that the outflow of tubes B “passes vertically downwards through the compartment” (col. 2 lines 24-25), “enters the operating theater downwardly” and is “unidirectionally forced through the operating theater.” See col. 2 lines 35-39. This written description makes clear that the flow of air is vertical and parallel to the walls and not in a direction away from the wall with the opening and the cover. Claim 10, which also depends from claim 1, recites that the air inlet opening is situated lower than said outflow

opening. In contrast, Howorth discloses that intake openings D and b are located above outflow tubes B.

Van der Waaji does not cure the deficiencies of Howorth. There is no operation unit *being an enclosed space* because, as shown in Fig. 1 of van der Waaji below, there is *no roof or ceiling or four interconnected side walls*. No reference teaches an enclosed operating unit whether germ free or not. Each of the Howorth and van der Waaji are presumably intended to provide a germ free environment and neither is an enclosed operating unit. Likewise, there is no air outlet or air inlet means *within* an enclosed operation unit space, simply because *there is no* enclosed operation unit space. At page 9 of the present office action, the Examiner defines the operation unit as the area formed around the table 11 by the cabinet 1 and the curtain 15. See Figure 1 below.

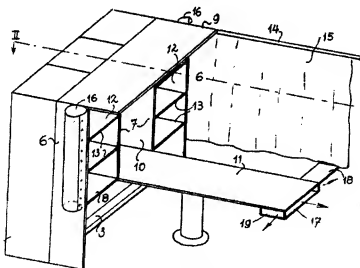


Fig. 1

However, even this arrangement is not an operation unit *being an enclosed space as side walls and a ceiling are missing*. The Examiner has not alleged in the present office action that van der Waaji teaches a roof with four interconnected walls, as claimed.

The air inlet 3 of van der Waaji does not retract air from within an enclosed space, as there is no enclosed space described by van der Waaji. Van der Waaji, describes an open air unit which is *the opposite of an enclosed space*. Even if the Examiner's arrangement resulted in an enclosed operation unit (which it does not), van der Waaji makes clear at col. 4 lines 62-66 that air taken from within the Examiner's "operation unit" by the air inlet 3 is disadvantageous. "During normal operation of this device, a substantial part of the air taken in through the opening 3 is derived from the space between the curtains 15. This is, as such, *unfavorable*, since, then, the useful air flow along the operating table is weakened." (Emphasis added.) With this teaching of van der Waaji, one of skill would not modify Howorth to move the air inlet d within its operation unit, but would keep it outside as shown in Fig. 3 to avoid the unfavorable weakened air flow described by van der Waaji.

In addition, van der Waaji does not teach a roof element (14) as argued by the Examiner at page 4. Clearly, element 14 is a guide for the curtain 15 (see col. 2 lines 46-48). It is a curtain rod and not a roof. If the Examiner maintains that element 14 is a roof, the Examiner is respectfully requested to identify the roof structure, or provided a reasoned basis of why one of skill in the art would understand the curtain rod is a roof.

The Examiner's combination of Howorth and van der Waaji clearly fail to teach or suggest claimed subject matter even if Howorth and van der Waaji were properly combinable. However, Applicant respectfully disagrees with the Examiner's basis for combining Howorth and van der Waaji, namely, one of skill would have enclosed an operating space to provide a germ free environment. As demonstrated above, neither Howorth nor van der Waaji describe an enclosed operating unit having four walls and a roof. This cannot be realistically disputed. Neither Howorth nor van der Waaji describe an air outlet and an air inlet means within the

enclosed operating unit. This cannot be realistically disputed. In view of these missing claim elements from the Examiner's combination of Howorth and van der Waaji, the Examiner has not, and cannot, provide the articulated reasoning supported by rational underpinnings in support of the combination that is required by *KSR*. Clearly, van der Waaji teaches an open air unit (presumably germ free), leaving one of skill with no basis from van der Waaji to modify to an enclosed unit. Clearly the air inlet of van der Waaji is not within an enclosed space, and neither is the air inlet of Howorth. Howorth teaches drawing air from outside of the four side walls. Even if van der Waaji did teach an air inlet retracting air from within an enclosed space (which it clearly does not), in order to modify Howorth with this teaching, one of skill would have to orient the extensive duct work and air flow unit in the top floor of Figure 3 somehow into the operation unit. Clearly, the structure of Howorth is so large and cumbersome as to provide a teaching against its being somehow reoriented or included into the operating unit and then placing a roof over the four walls to provide an enclosed space. Further, van der Waaji teaches that it is *unfavorable* to have an air inlet sucking air from within the vicinity of the operating table within an operating unit, whether germ free or not.

Claims 15-18 stand rejected as being obvious in view of the Examiner's combination of Howorth US 3,602,212, van der Waaji US 3,893,457 and Wiedner US 5,860,420. Wiedner fails to cure the deficiencies of Howorth and van der Waaji as described above.

Respectfully submitted,

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